

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOEL M. CRAM, et al.,) Civil No.07cv1842-LAB(NLS)
v.)
Plaintiffs,)
ELECTRONIC DATA SYSTEMS)
CORPORATION, et al.,)
Defendants.)
)
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)
)
**NOTICE AND ORDER RESETTING
EARLY NEUTRAL EVALUATION
CONFERENCE**

An Early Neutral Evaluation of this case was previously scheduled on November 6, 2007 [Doc. No. 2]. On October 26, 2007, Defendant Electronic Data Systems Corporation filed an *Ex Parte* Application [Doc. No. 23] requesting that the Court continue the ENE in light of Plaintiff Joel M. Cram's motion to remand this case to state court. The Court granted the request, and vacated the conference, advising the parties in its order that the conference would be reset in the event that the case continued to proceed in federal court. [Doc. No. 25]. On December 19, 2007, the presiding District Judge denied Plaintiff's motion to remand [Doc. No. 55]. Accordingly, **IT IS HEREBY ORDERED** that an Early Neutral Evaluation Conference ("ENE") will be held on **February 4, 2008** at **9:30 a.m.** in the Chambers of Magistrate Judge Nita L. Stormes, United States Courthouse, 940 Front Street, Room 1118, San Diego, California 92101. In the event that this case does not settle during the ENE, the Court will take the opportunity to discuss case management issues as well, and a case management order will be issued promptly following the ENE.

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1 **The following are mandatory guidelines for the parties preparing for the Early Neutral
2 Evaluation Conference.**

3 1. **Purpose of Conference:** The purpose of the Early Neutral Evaluation Conference
4 (“ENE”) is to permit an informal discussion between the attorneys, parties, and the settlement judge of
5 every aspect of the lawsuit in an effort to achieve an early resolution of the case. All conference
6 discussions will be informal, off the record, privileged and confidential. Counsel for any non-English
7 speaking parties is responsible for arranging for the appearance of an interpreter at the conference.

8 2. **Personal Appearance of Parties Is Required:** All parties, adjusters for insured
9 defendants, and other representatives of a party having full and complete authority to enter into a
10 binding settlement, and the principal attorneys responsible for the litigation, must be present in person
11 and legally and factually prepared to discuss settlement of the case. Full authority to settle means that
12 the individuals at the ENE be authorized to fully explore settlement options and to agree at that time to
13 any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871
14 F.2d 648, 653 (7th Cir. 1989). The person needs to have “unfettered discretion and authority” to change
15 the settlement position of a party. *Pitman v. Brinker Int’l, Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz.
16 2003). One of the purposes of requiring a person with unlimited settlement authority to attend the
17 conference is that the person’s view of the case may be altered during the face-to-face conference.
18 *Pitman*, 216 F.R.D. at 486. Limited or sum certain authority is not adequate. *Nick v. Morgan’s Foods*,
19 Inc., 270 F.3d 590, 595-597 (8th Cir. 2001). Counsel appearing without their clients (whether or not
20 counsel has been given settlement authority) will be cause for immediate imposition of sanctions and
21 will also result in the immediate termination of the conference.

22 3. **Full Settlement Authority Required:** In addition to counsel who will try the case, a
23 party or party representative with full settlement authority must be present for the conference. In the
24 case of a corporate entity, an authorized representative of the corporation who is not retained outside
25 counsel must be present and must have discretionary authority to commit the company to pay an amount
26 up to the amount of the plaintiff’s prayer (excluding punitive damage prayers). The purpose of this
27 requirement is to have representatives present who can settle the case during the course of the
28 conference without consulting a superior. Counsel for a government entity may be excused from this

1 requirement so long as the government attorney who attends the ENE conference (1) has primary
 2 responsibility for handling the case; and (2) may negotiate settlement offers which the attorney is
 3 willing to recommend to the government official having ultimate settlement authority.

4. **Confidential ENE Statements Required:** No later than three (3) court days prior to the
 5 ENE, the parties shall submit confidential statements of five pages or less directly to the chambers of
 6 Magistrate Judge Stormes outlining the nature of the case, the claims, and the defenses. These
 7 statements shall not be filed or served on opposing counsel.

8. **New Parties Must Be Notified by Plaintiff's Counsel:** Plaintiff's counsel shall give
 9 notice of the ENE to parties responding to the complaint after the date of this notice.

10. **Case Management Under the Amended Federal Rules:** In the event the case does not
 11 settle at the ENE, the parties can expect to leave the ENE with Rule 26 compliance dates or deadlines.
 12 Parties shall therefore be prepared to discuss the following matters at the conclusion of the ENE
 13 conference:

- 14. a. Any anticipated objections under Federal Rule of Civil Procedure 26(a)(1)(E) to
 the initial disclosure provisions of Federal Rule of Civil Procedure 26(a)(1)(A-D);
- 15. b. The scheduling of the Federal Rule of Civil Procedure 26(f) conference within 24
 days following the ENE;
- 16. c. The date of initial disclosure and the date for lodging the discovery plan within 14
 days following the Rule 26(f) conference; and,
- 17. d. The scheduling of a Case Management Conference pursuant to Federal Rule of
 Civil Procedure 16(b) within 21 days following the Rule 26(f) conference.

22. The Court will issue an order following the ENE addressing these issues and setting dates as
 23 appropriate.

24. 7. **Requests to Continue an ENE Conference:** Local Rule 16.1(c) requires that an ENE
 25 take place within 45 days of the filing of the first answer. Requests to continue ENEs are rarely granted.
 26. However, the Court will consider formal, written *ex parte* requests to continue an ENE conference when
 27 extraordinary circumstances exist that make a continuance appropriate. In and of itself, having to travel
 28 a long distance to appear in person is not "extraordinary." **Absent extraordinary circumstances,**
requests for continuances will not be considered unless submitted in writing no less than seven (7)

1 **days prior to the scheduled conference.**

2 Questions regarding this case or the mandatory guidelines set forth herein may be directed to the
3 Magistrate Judge's law clerks at (619) 557-5391.

4 **IT IS SO ORDERED.**

5 DATED: January 3, 2008

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7 Hon. Nita L. Stormes
U.S. Magistrate Judge

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